

[Counsel on signature page]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

Abdi Nazemian, et al.,
Plaintiffs,

vs.

NVIDIA Corporation,
Defendant.

Case No. 4:24-cv-01454-JST
Case No. 4:24-cv-02655-JST

**JOINT CASE MANAGEMENT
STATEMENT**

Hearing Date: December 13, 2024
Time: 1:30 PM
Place: via Zoom
Judge: Hon. Jon S. Tigar

Andre Dubus III, et al.,
Plaintiffs,
vs.
NVIDIA Corp.,
Defendant.

Pursuant to Civil Local Rule 16-9(d), the Standing Order For All Judges of The Northern District Of California (updated Nov. 30, 2023), and the Court’s Minute Orders, Dkt. 66 (*Nazemian* docket) and Dkt. 56 (*Dubus* docket), counsel for Plaintiffs Abdi Nazemian, Brian Keene, Stewart O’Nan, Andre Dubus III, Susan Orlean, and the proposed class (together “Plaintiffs”) and Defendant NVIDIA Corporation (“NVIDIA” or “Defendant”) (collectively the “parties”), have met and conferred and respectfully submit this Joint Case Management Statement in advance of the Case Management Conference on December 13, 2024. While the parties do not have any issues to present to the Court at the Case Management Conference beyond the disputes related to the ESI protocol and protective order (regarding which the parties have submitted briefing at *Nazemian* Dkt. 88 and 89), in accordance with Section E of the Court’s Standing Order for All Civil Cases, the parties address the topics in the Standing Order For All Judges of The Northern District Of California below.

1. Jurisdiction and Service

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), as this action alleges violations of the Copyright Act (17 U.S.C. § 501). NVIDIA does not challenge personal jurisdiction. All parties have been served.

2. Facts

Plaintiffs’ Statement

The Complaints in the *Nazemian* Action and the *Dubus* Action each allege one count of direct copyright infringement against Defendant NVIDIA Corporation. Plaintiffs are writers who own copyrights in works allegedly used to train Defendant’s large language models (“LLMs”), namely the NeMo Megatron models. The Complaints each allege that Defendant copied Plaintiffs’ registered Works to train (i.e., the process by which an Artificial Intelligence (“AI”) program can “learn” how to anticipate and provide outputs to prompts) its LLMs in violation of the Copyright Act, 17 U.S.C. § 501. Defendant’s LLMs copied The Pile and Books3 datasets, which include the *Nazemian* and *Dubus* Plaintiffs’ Infringed Works, and used these copies to train its LLMs. Defendant’s models—built on Plaintiffs’ Infringed Works—to directly compete with Plaintiffs’ Works. Plaintiffs have been injured by Defendant’s conduct.

1 **Defendant’s Statement**

2 In this lawsuit, Plaintiffs seek to create a new right to control the use of uncopyrightable
3 facts and ideas in the public domain. Their complaint runs counter to decades of settled precedent,
4 and would radically alter the scope of copyright law, far outside the realm of artificial intelligence.

5 Plaintiffs’ complaint asserts a single claim for direct copyright infringement. Plaintiffs do
6 not allege that the outputs of NVIDIA’s AI models have ever copied protected expression. Instead,
7 Plaintiffs solely target the process by which AI models are trained. Training measures statistical
8 correlations in the aggregate, across a vast body of data, and encodes them into the parameters of a
9 model. Plaintiffs do not try to claim a copyright over those statistical correlations, asserting instead
10 that the training data itself is “copied” for the purposes of infringement. But Plaintiffs cannot use
11 copyright to preclude access to facts and ideas, and the highly transformative training process is
12 protected entirely by the well-established fair-use doctrine. Indeed, to accept Plaintiffs’ theory
13 would mean that an author could copyright the rules of grammar or basic facts about the world.
14 That has never been the law, for good reason.

17 **3. Legal Issues**

18 **Plaintiffs’ Position**

19 The legal and factual issue at the core of this case is whether Defendant’s unlawful copying
20 has violated the Copyright Act, 17 U.S.C. § 501, *et seq.* NVIDIA has indicated that it will rely upon
21 a fair use defense. However, NVIDIA will not be able to carry its burden to prove fair use. For
22 example, NVIDIA has not disputed that it copied Plaintiffs’ work to train its AI models without
23 consent, credit, or compensation. By relying on works taken without creators’ permission, any
24 argument on fair use will fall short. *Harper & Row v. Nation Enterprises*, 471 U.S. 539, 562 (1985)
25 (explaining that fair use defense “presupposes good faith”); *Mfg. Automation & Software Sys., Inc.*
26 *v. Hughes*, 2018 WL 3197696, at *11 (C.D. Cal. June 25, 2018) (“[C]ourts have concluded that fair
27 use is not an available defense to intermediate copying when a defendant is in unauthorized
28 possession of a plaintiff’s source code.”). That is before considering the sheer volume of

1 infringements, which, of course, counsels against fair use. *See Harper & Row*, 471 U.S. at 569
 2 (““Isolated instances of minor infringements, when multiplied many times, become in the aggregate
 3 a major inroad on copyright that must be prevented.””) (quoting S. Rep. No. 473 at 65 (1975)).

4 There are numerous other questions of law or fact common to the class, and those issues
 5 predominate over any question affecting individual class members. *See* Section 9, *infra*.

6 **Defendant’s Position**

7 Among other issues, this case presents two interrelated questions: *First*, whether Plaintiffs’
 8 claims represent an impermissible attempt to copyright facts and grammar. *Second*, whether any
 9 copying by NVIDIA is a fair use.

10 Although generative AI is a recent phenomenon, the legal principles governing this case
 11 were established long ago: Copyright law protects specific expressions, but does not grant property
 12 rights over facts, ideas, data, or information. As the Supreme Court has explained: “[N]o matter
 13 how much original authorship the work displays, the facts and ideas it exposes are free for the
 14 taking.” *Feist Pubs., Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 349 (1991). “[T]his is not some
 15 unforeseen byproduct of a statutory scheme. It is, rather, the essence of copyright and a
 16 constitutional requirement [C]opyright assures authors the right to their original expression,
 17 but encourages others to build freely upon the ideas and information conveyed by a work This
 18 result is neither unfair nor unfortunate. It is the means by which copyright advances the progress of
 19 science and art.” *Id.* at 349-50 (internal quotations and citations omitted); *Baker v. Selden*, 101 U.S.
 20 99, 102-04 (1879); U.S. Const., Art. I, § 8, cl. 8; 17 U.S.C. § 102(b).

23 In addition, fair use protects the ability to copy particular expressions for a transformative
 24 purpose. As an example, the Ninth Circuit Court of Appeals ruled that making intermediate copies
 25 of entire source code files was fair use where the copying provided access to the unprotected ideas
 26 and functions embedded in that code and the defendant created a transformative new product. *Sony*
 27 *Computer Entertainment Inc. v. Connectix Corp.*, 203 F.3d 596, 602-08 (9th Cir. 2000). As another
 28

1 example, the Second Circuit Court of Appeals ruled that copying entire books to create a searchable
2 database was fair use. *Authors Guild v. Google, Inc.*, 804 F.3d 202, 224-25 (2d Cir. 2015). NVIDIA
3 disputes Plaintiffs characterizations of the facts and law and specifically denies that NVIDIA has
4 ever acted in bad faith. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 585 n.18, (1994) (“If the
5 use is otherwise fair, then no permission need be sought or granted.”); *Google, LLC v. Oracle Am.,*
6 *Inc.*, 593 U.S. 1, 32 (2021) (“our decision in *Campbell* expressed some skepticism about whether
7 bad faith has any role in a fair use analysis. We find this skepticism justifiable”).

9 **4. Motions**

10 There are no pending motions at this time.

11 As noted in Section 10 (Related Cases) below, the *Nazemian* and *Dubus* Actions have been
12 judicially related. Plaintiffs are discussing formal consolidation.

13 As noted in Section 8 (Discovery) below, the parties conferred regarding a stipulated ESI
14 Protocol and Protective Order, and submitted outstanding disputes on those topics to the Court for
15 consideration and resolution. *Nazemian* Dkt. 88 and 89.

16 The parties hope to resolve future discovery disputes without judicial intervention, but
17 anticipate that discovery motions may be necessary.

18 **Plaintiffs’ Position:**

19 Plaintiffs also anticipate a class certification motion, and possible summary judgment
20 motions.

21 **Defendant’s Position:**

22 To the extent Plaintiffs do not agree to consolidate the *Nazemian* and *Dubus* Actions,
23 NVIDIA may file a motion to consolidate. NVIDIA also anticipates filing a summary judgment
24 motion.

25 **5. Amendment of Pleadings**

26 NVIDIA has answered the complaints in both actions. The parties do not anticipate any
27 substantive amendments to the pleadings at this time. As set out above in Section 4 (Motions) the
28

1 parties are discussing consolidation. To the extent the actions are consolidated, Plaintiffs will file a
2 consolidated complaint, and NVIDIA will file a consolidated answer in response.

3 **6. Evidence Preservation**

4 The parties have reviewed this Court's Guidelines Relating to the Discovery of
5 Electronically Stored Information and have met and conferred pursuant to Rule 26(f) regarding
6 reasonable and proportionate steps to preserve evidence relevant to the issues evident in the case.
7 The parties are aware of their obligations and have taken reasonable steps to preserve potentially
8 relevant evidence. The parties will continue to meet and confer concerning ESI.

9 The parties have confirmed that they are unaware of any source of ESI that is reasonably
10 expected to be subject to discovery that has been destroyed, not maintained, or is not reasonably
11 accessible.

12 **7. Disclosures**

13 Plaintiffs and Defendant have served their Federal Rule of Civil Procedure 26(a) initial
14 disclosures, and Defendant supplemented its initial disclosures on October 25, 2024. The Parties
15 will supplement initial disclosures as necessary, consistent with Rule 26(e).

16 **8. Discovery**

17 The parties have conferred regarding a stipulated ESI Protocol and Protective Order, and
18 have sought guidance from the Court on remaining disputed issues. Briefing on the disputed issues
19 is complete (*Nazemian* Dkt. 88 and 89) and the parties await the Court's ruling.

20 **9. Class Action**

21 Plaintiffs filed these two cases as putative class actions. Counsel for both sides have
22 reviewed the Procedural Guidance for Class Action Settlements.

23 **10. Related Cases**

24 Pursuant to the Court's May 29, 2024 Order (*Nazemian* Dkt. 47) (*Dubus* Dkt. 17), the later-
25 filed case *Dubus et al. v. NVIDIA Corporation*, 4:24-cv-02655-JT (N.D. Cal.) has been related to
26 *Nazemian et al. v. NVIDIA Corporation*, No. 3:24-cv-01454 (N.D. Cal.). Counsel are discussing
27 consolidation of these two cases. NVIDIA believes the cases should be consolidated expeditiously
28 in the interest of efficiency and judicial economy.

1 The parties are unaware of any other cases brought on behalf of authors with registered
2 copyrights involving Defendant's LLMs other than the two cases involved here.

3 **11. Relief**

4 **Plaintiffs' Statement:** The *Nazemian* and *Dubus* Plaintiffs seek statutory and other damages
5 under 17 U.S.C. § 504 for Defendant's violations of the copyrights of Plaintiffs and the class,
6 including an award of reasonable attorneys' fees under 17 U.S.C. § 505 or other applicable statutes.
7 Plaintiffs further seek destruction or other reasonable disposition of all copies Defendant made or
8 used in violation of the exclusive rights of Plaintiffs and the class, pursuant to 17 U.S.C. § 503(b).
9 Plaintiffs seek pre- and post-judgment interest on damages awarded to Plaintiffs and the class, at the
10 highest legal rate from and after March 8, 2024, the date the *Nazemian* class action Complaint was
11 first served on Defendant.

12 **Defendant's Position:** NVIDIA denies that Plaintiffs are entitled to any damages,
13 permanent injunction, or other relief whatsoever, or that the classes alleged in the Complaints can
14 be certified. NVIDIA believes it is premature to opine on methods of calculating potential damages.

15 **12. Settlement and ADR**

16 ADR Certifications pursuant to ADR Local R. 3-5(b) were filed by the *Nazemian* Plaintiffs
17 on May 9, 2024 (*Nazemian* Dkts. 32-34) and by the *Dubus* Plaintiffs on June 17, 2024 (*Dubus* Dkts.
18 44-45). NVIDIA filed ADR Certifications pursuant to ADR Local R. 3-5(b) in both cases on July
19 29, 2024. The parties continue to meet and confer on an ADR plan.

20 **13. Other References**

21 The parties agree that this case is not suitable for binding arbitration, a special master, or the
22 Judicial Panel on Multidistrict Litigation at this time.

23 The parties do not oppose having discovery disputes heard by a magistrate judge if the Court
24 is inclined to appoint a discovery magistrate. Pursuant to the Court's Orders After Case
25 Management Conference (*Nazemian* Dkt. 68 and *Dubus* Dkt. 56), the parties met and conferred
26 regarding Magistrate Judges seated in either the Oakland or San Francisco Divisions of the Northern
27 District of California to supervise discovery in both actions, and submitted the Hon. Sallie Kim and
28 Hon. Kandis A. Westmore for the Court's consideration. *Nazemian* Dkt. 78.

1 **14. Narrowing of Issues**

2 No issues have yet been narrowed by agreement or by motion.

3 **15. Scheduling**

4 **a. Expedited Trial Procedures**

5 The parties agree that these Actions are inappropriate for the Expedited Trial Procedure of
6 General Order 64.

7 **b. Case Schedule**

8 The parties stipulated to a case schedule, which was ordered by the Court on September 11,
9 2024. *Nazemian* Dkt. 71 and *Dubus* Dkt. 59.

10 **16. Trial**

11 The parties agree that should the case proceed to trial, it should be tried to a jury. The parties
12 anticipate a 14-day trial.

13 **17. Disclosure of Non-Party Interested Entities or Persons**

14 The *Nazemian* Plaintiffs filed a Certification of Interested Entities or Persons along with the
15 Complaint on March 8, 2024 (*Nazemian* Dkt. 4). The *Dubus* Plaintiffs filed their Certification of
16 Interested Entities or Persons on June 17, 2024 (*Dubus* Dkt. 43).

17 NVIDIA filed a Certification of Interested Entities or Persons on March 28, 2024 in the
18 *Nazemian* case (*Nazemian* Dkt. 26) and on May 31, 2024 in the *Dubus* case (*Dubus* Dkt. 23).

19 **18. Professional Conduct**

20 All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct
21 for the Northern District of California.

22 **19. Other Matters**

23 The parties are not presently aware of other matters that may facilitate the resolution of these
24 cases.

1 Dated: December 5, 2024

Respectfully submitted,

2 By: /s/ Joseph R. Saveri

3 Joseph R. Saveri (State Bar No. 130064)

4 Christopher K.L. Young (State Bar No.
318371)

5 Elissa A. Buchanan (State Bar No. 249996)

6 Evan Creutz (State Bar No. 349728)

JOSEPH SAVERI LAW FIRM, LLP

601 California Street, Suite 1505

7 San Francisco, California 94108

8 Telephone: (415) 500-6800

Facsimile: (415) 395-9940

9 Email: jsaveri@saverilawfirm.com

cyoung@saverilawfirm.com

10 eabuchanan@saverilawfirm.com

11 ecreutz@saverilawfirm.com

12 Matthew Butterick (State Bar No. 250953)

1920 Hillhurst Avenue, #406

13 Los Angeles, CA 90027

14 Telephone: (323) 968-2632

Facsimile: (415) 395-9940

15 Email: mb@buttericklaw.com

16 Brian D. Clark (*pro hac vice*)

Laura M. Matson (*pro hac vice*)

17 Arielle Wagner (*pro hac vice*)

Eura Chang (*pro hac vice*)

18 **LOCKRIDGE GRINDAL NAUEN PLLP**

100 Washington Avenue South, Suite 2200

19 Minneapolis, MN 55401

20 Telephone: (612)339-6900

Facsimile: (612)339-0981

21 Email: bdclark@locklaw.com

lmmatson@locklaw.com

22 aswagner@locklaw.com

23 echang@locklaw.com

24 *Attorneys for Plaintiffs and the Proposed*
25 *Class in the Nazemian Action*

1 Dated: December 5, 2024

Respectfully Submitted,

2 By: /s/ Bryan L. Clobes

3 Bryan L. Clobes (*pro hac vice*)
4 Alexander J. Sweatman (*pro hac vice*)
5 Mohammed A. Rathur (*pro hac vice*)
6 **CAFFERTY CLOBES MERIWETHER**
7 **& SPRENGEL LLP**
8 135 South LaSalle Street, Suite 3210
9 Chicago, IL 60603
Telephone: 312-782-4880
bclobes@caffertyclobes.com
asweatman@caffertyclobes.com
mrathur@caffertyclobes.com

10 Amy E. Keller (*pro hac vice*)
11 Nada Djordjevic (*pro hac vice*)
12 James A. Ulwick (*pro hac vice*)
13 **DiCELLO LEVITT LLP**
14 Ten North Dearborn Street, Sixth Floor
15 Chicago, Illinois 60602
16 Tel. (312) 214-7900
17 akeller@dicellolevitt.com
18 ndjordjevic@dicellolevitt.com
19 julwick@dicellolevitt.com

20 David A. Straite (*pro hac vice*)
21 **DiCELLO LEVITT LLP**
22 485 Lexington Avenue, Suite 1001
23 New York, NY 10017
24 Tel. (646) 933-1000
25 dstraite@dicellolevitt.com

26 *Attorneys for Plaintiffs and the Proposed*
27 *Class in the Dubus Action*
28

1 Dated: December 5, 2024

Respectfully Submitted,

2 By: /s/ Sean S. Pak

3 **QUINN EMANUEL URQUHART &**
4 **SULLIVAN, LLP**

5 Sean S. Pak (Bar No. 219032)
6 seanpak@quinnemanuel.com
7 50 California Street, 22nd Floor
8 San Francisco, CA 94111
9 Telephone: (415) 875-6600
10 Facsimile: (415) 875-6700

11 Andrew H. Schapiro (*pro hac vice*)
12 andrewschapiro@quinnemanuel.com
13 191 N. Wacker Drive, Suite 2700
14 Chicago, Illinois 60606
15 Telephone: (312) 705-7400
16 Facsimile: (312) 705-4001

17 Alex Spiro (*pro hac vice*)
18 alexspiro@quinnemanuel.com
19 Ron Hagiz (*pro hac vice*)
20 ronhagiz@quinnemanuel.com
21 Jessica Rose (*pro hac vice*)
22 jessicarose@quinnemanuel.com
23 51 Madison Avenue, 22nd Floor
24 New York, NY 10010
25 Telephone: (212) 849-7000
26 Facsimile: (212) 849-7100

27 *Attorneys for Defendant NVIDIA Corporation*
28

L.R. 5-1 SIGNATURE ATTESTATION

This document is being filed through the Electronic Case Filing (ECF) system by attorney Joseph R. Saveri. By their signature, Mr. Saveri attests that he has obtained concurrence in the filing of this document from each of the attorneys identified on the caption page and in the above signature block.

Dated: December 5, 2024

By /s/ Joseph R. Saveri

Joseph R. Saveri